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HIGH COURT OF CHHATTISGARH, BILASPUR

Cr.M.P. NO.82/2007

PETITIONERS

1. Sunil Jain, S/o Mohan Lal Jain, Aged about 44 years.
2. Madan Jain, S/o Mohan Lal Jain, Aged about 55 years.
3. Bharat Jain, S/o Madan Jain, Aged about 34 years.
4. Sajal Jain, S/o Rajendra Jain, Aged about 26 years.

(All R/o Mahavir Colony, Durg and Panch Kandil Gandhi Chowk, Durg, District Durg (C.G.)

Versus

RESPONDNETS

State of Chhattisgarh through P.S. Durg (C.G.)

PETITION UNDER SECTION 482 Cr.P.C.

Appearance:

Shri P. Diwakar, Sr. Advocate with Shri Adil Minhaz, Counsel for the petitioners.

Shri Neeraj Mehta, Panel Lawyer for the State.

ORAL ORDER
(18.07.2007)

SUNIL KUMAR SINHA, J.

Heard on admission.

Challenge is made to the order dated 3.11.2006 passed in Criminal Revision No.147/2006 by the Sessions Judge, Durg, who has rejected the revision and has affirmed the order of framing of charges against the petitioners, including a charge under Section 452 of IPC.

Learned counsel for the petitioners submits that in the facts and circumstances of this case, an offence under Section 452 of IPC would not be made out, therefore, framing of charge under the said Section of IPC was not in accordance with law. He also submits that the incident is said to have been taken place in a shop and there was no evidence of preparation before entering into the shop.

Section 452 of IPC deals about house-trespass after preparation for hurt, assault or wrongful restraint. It has been provided that whoever commits house-trespass, having made preparation for

causing hurt to any person or for assaulting any person, or for wrongfully restraining any person, or for putting any person in fear of hurt, or of assault, or of wrongful restraint, shall be punished with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine. The word "house trespass" has been defined in Section 442 of IPC, which says that whoever commits criminal trespass by entering into or remaining in any building, tent or vessel used as a human dwelling or any building used as a place for worship, or as a place for the custody of property, is said to have committed "house-trespass". Therefore, it is clear that *prima facie* if there is an evidence of house trespass and there is also an evidence of preparation for causing hurt or for assault or for wrongful restraining or for putting a person in fear of hurt or assault or wrongful restraint, the act shall be covered under Section 452 of IPC.

In the present case, if we look into the contents of the FIR and other evidence, it would appear that the petitioners had entered into the shop of the complainant alongwith spade etc. and assaulted him and had also damaged certain property belonging to him and in the facts and circumstances of the case, there was sufficient material before the trial Court for framing charge under Section 452 of IPC alongwith other charges framed by it.

I do not find any illegality in the charges framed by the trial Court. The charges are framed on sufficient material available on record.

There is no merit in the petition and the same is dismissed at the motion stage itself.

At this stage, learned Senior counsel makes his submission that it may be cleared that the observations made by this Court will not prejudice the case of the petitioners.

Needless to say that the observations made by this Court are for the purpose of disposal of this petition only, and it shall not come in the way of the trial Court, while dealing with the matter at the later stage, which shall be decided on its own merits in accordance with law.

Sd/-
SUNIL KUMAR SINHA
Judge

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